

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**HEALTHBRIDGE MANAGEMENT, LLC;
CARE REALTY, LLC; CAREONE, LLC;
107 OSBORNE STREET OPERATING
COMPANY II, LLC d/b/a DANBURY HCC;
710 LONG RIDGE ROAD OPERATING COMPANY II, LLC
d/b/a LONG RIDGE OF STAMFORD;
240 CHURCH STREET OPERATING COMPANY II, LLC
d/b/a NEWINGTON HEALTH CARE CENTER;
1 BURR ROAD OPERATING COMPANY II, LLC
d/b/a WESTPORT HEALTH CARE CENTER;
245 ORANGE AVENUE OPERATING COMPANY II, LLC
d/b/a WEST RIVER HEALTH CARE CENTER;
341 JORDAN LANE OPERATING COMPANY II, LLC d/b/a
WETHERSFIELD HEALTH CARE CENTER**

and

**Cases 34-CA-070823
34-CA-072875
34-CA-075226
34-CA-083335
34-CA-084717**

**NEW ENGLAND HEALTH CARE EMPLOYEES
UNION, DISTRICT 1199, SEIU, AFL-CIO**

ORDER¹

On October 31, 2012, the Board issued an unpublished Order in this proceeding.

At the time of the Order, the composition of the National Labor Relations Board included

¹ Member Emanuel is a member of the panel but did not participate in this decision on the merits.

In *New Process Steel v. NLRB*, 130 S.Ct. 2635 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum when one of the panel members has recused himself. Under the Court's reading of the Act, "the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified." *New Process Steel*, 130 S.Ct. at 2644; accord *NLRB v. New Vista Nursing & Rehabilitation*, 870 F.3d 113, 127–128 (3d Cir. 2017); *D.R. Horton*, 357 NLRB 2277, 2277 fn. 1 (2012), enfd. in relevant part, 737 F.3d 344, 353 (5th Cir. 2013); *1621 Route 22 West Operating Co.*, 357 NLRB 1866, 1866 fn. 1 (2011), enfd. 725 Fed. Appx. 129, 136 fn. 7 (3d Cir. 2018).

two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. On December 17, 2019, the General Counsel filed a motion seeking to vacate the Board's October 31, 2012 Order, and upon de novo review of the Respondents' Requests for Special Permission to Appeal Administrative Law Judge Kenneth Chu's ruling denying their petitions to revoke the then-Acting General Counsel's Subpoenas Duces Tecum, to reissue the Order.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we grant the General Counsel's motion to vacate the Board's October 31, 2012 Order.² We have also considered de novo the Respondents' Requests for Special Permission to Appeal and the now-vacated Order in light of the pleadings and briefs, and we agree with the rationale set forth therein. Accordingly, we find that the judge did not abuse his discretion in denying the petitions to revoke the subpoenas, and we incorporate the Board's October 31, 2012 Order herein by reference.

The Respondents' Requests for Special Permission to Appeal Administrative Law Judge Kenneth Chu's ruling denying their petitions to revoke the then-Acting General Counsel's Subpoenas Duces Tecum are denied in part and granted in part. The Respondents are directed to provide all responsive documents and communications available without resort to analysis of the email backup tapes, subject to the General Counsel thereafter having the opportunity to establish that an additional search of the email backup tapes is necessary, and the Respondents having the

²We find no merit to the Respondents' arguments that the General Counsel's motion was not filed promptly and that the issues addressed by the subpoenas are not yet ripe.

opportunity to demonstrate that it would be unduly burdensome.

Dated, Washington, D.C., March 2, 2020

JOHN F. RING,

CHAIRMAN

MARVIN E. KAPLAN,

MEMBER